CF0000062876

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No. 107 /2000.

APPELLANT. (In Jail) : Shudul S/o. Prem Prasad Bargah aged about 34 years, R/o. Village- Bazarpara, Lakhanpur PS- Lakhanpur District- Sarguja, MP.

-Versus-

RESPONDENT. : The State of M.P. through PS- Lakhanpur District- Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

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मामला क्रमांक CrApl 107/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. SATISH AGNIHOTRI, JJ.

CRIMINAL APPEAL NO. 107/2000

Appellant : Shudul

Versus

Respondent : State of M.P.

Shri A.K. Prasad counsel for the appellant.

Shri U.N.S. Deo Additional Public Prosecutor with Shri Sudhir Bajpai PL for the respondent/State.

ORAL JUDGMENT

(25.7.2006)

The appellant by this appeal preferred under section 374 (2) of the Code of Criminal Procedure has challenged the legality and correctness of the impugned judgment dated 3.12.1999 passed by Additional Sessions Judge, Ambikapur (Sarguja) in Sessions Trial No. 198/1991 whereby he has been convicted under section 302 of the IPC and sentenced to undergo imprisonment for life.

2. Case of the prosecution in brief is that on 21.4.1991 at about 8.10 a.m. PW-4 Pushpa lodged the report Ex. P-2 in police

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

station Lakhanpur to the effect that on that day at a place adjoining to their house, accused/appellant Shudul and other persons were digging a pit in order to construct a partition wall. But her father Devsharan was objecting to it. When with the help of rope land was being measured, Harihar Gupta, Udainath and father of the accused Shudul were present there. At that time she was preparing breakfast for her father, when she was going to call her father, Harihar who was already present there shouted that accused Shudul had attacked her father. On hearing the shouts she rushed towards the place of occurrence and saw that Shudul had assaulted her father on head with spade as a result of which her father received injuries on head and blood started oozing. She started weeping there and her grand-mother also came to the place of occurrence. On receiving this report Station House Officer registered a case against the accused/appellant under section 307 of the IPC, left for the scene of occurrence, took into possession blood stained and plain soil and the weapon of offence i.e. axe from the place of occurrence under Ex. P-3 and P-4 respectively. After giving notice Ex. P-5 to the Panchas, Panchnama Ex. P-6 of the body of the deceased was prepared. Photographs of the place of occurrence were also taken. Thereafter, body of Devsharan was sent for post mortem examination to Ambikapur Hospital where Dr. M.K. Jain conducted the post mortem examination and prepared the post mortem report Ex. P-8 in which he opined that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cause of death was coma due to the head injury and fracture of skull bone. Site plan Ex. P-10 was prepared. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Court of Sessions Judge, Ambikapur from where learned Additional Sessions Judge Ambikapur received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined as many as 19 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution case and stated that at the time of incident he was mad and on that day he was sent for medical treatment and he was not able to recollect anything about the incident.

4. Learned Additional Sessions Judge after hearing the arguments advanced by Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of this judgment.

5. As far as the question of homicidal death of Devsharan is concerned the same is not disputed by the counsel for the appellant. Even otherwise, from the evidence of PW-11 Phulbasia and PW-16 Dasoda, the eyewitnesses to the incident

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

who witnessed the accused assaulting the deceased with spade. In the evidence of Dr. Jain PW-8 who conducted the post mortem examination on the body of Devsharan has stated that there was an injury on head in the length of 4" and parietal bone was also found fractured, cause of death was coma as a result of fracture of skull and injuries to the brain, in view of the ocular as well as medical evidence it is established that death of Devsharan was homicidal in nature.

6. As far as involvement of the accused/appellant in the crime in question is concerned, PW-11 has stated that on the fateful day accused assaulted the deceased with spade. She has further stated that at the time of incident she was cleansing the utensils at a distance of about 150 ft. and Harihar Master was measuring the land of the deceased Devsharan and of the father of the accused namely Prem. She does not know as to with which weapon the accused assaulted the deceased but she heard the sound, went towards that place, water was offered to Devsharan, there was an injury on his head and blood was oozing from the nose and accused Shudul ran away from the place of incident. PW-16 Dasoda has also stated that Devsharan was her son-in-law, father of the accused namely Prem and deceased Devsharan were talking regarding land for the purpose of plinth, at that time Harihar was also standing there, Shudul came and attacked Devsharan with spade on his

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

head as a result of which Devsharan received injuries on the back of the head.

7. Learned counsel for the appellant is not able to point out any infirmity in the evidence of these two witnesses who witnessed the incident, therefore, we are of considered opinion that findings of the trial court to this extent do not require any interference by this Court.

8. Learned counsel for the accused/appellant submitted that from the evidence of PW-11 Phulbasia and PW-15 Dasoda it has come on record that when Harihar was measuring the land where Devsharan and father of the accused namely Prem were standing, accused came there, picked up spade and assaulted Devsharan on his head and ran away. Thus according to the counsel for the appellant quarrel took place suddenly without premeditation and preparation, in the heat of passion and as such the offence alleged against the appellant does not travel beyond section 304-II of the IPC.

9. On the other hand Mr. U.N.S. Deo Additional Public Prosecutor assisted by Shri Sudhir Bajpai PL appearing for the respondent State argued that the manner in which the accused attacked the deceased on his head with spade makes it clear that the accused attacked Devsharan with an intention to cause his death.

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. In order to appreciate the arguments advanced by counsel for the respective parties, we have perused the evidence of PW-16 Dasoda, the mother-in-law of the deceased who has categorically stated that father of the accused namely Prem and Devsharan were standing there and Harihar was measuring the land, at that time accused Shudul came there and assaulted Devsharan with spade on his head. There is nothing in her evidence to show that the accused came after making any preparation. From the evidence of this witness it appears that when Prem, the father of the accused was digging the plinth, at that time there was some dispute between Devsharan and father of the accused regarding some place of plinth and for that purpose the land was being measured and at that moment accused came and assaulted the deceased with spade. The above fact discloses that the accused assaulted the deceased with spade on head all of a sudden without any premeditation and preparation in the heat of passion. As such case of the accused is squarely covered with exception 4 of section 300 of the IPC and for this we are fortified in our view by the judgment of the Supreme Court in the matter of **Ravi Kumar Vs. State of Punjab** reported in **AIR 2005 SC 1929.** The facts of that case were that there was some dispute between deceased Hashraj and accused Ravi Kumar, the servant of one Gandharv Singh over a very trivial matter on May 29,1996 and on 30.9.1996 at about 7 p.m. when the three brothers were present in Hada Rori

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of village Jadla, Gandharv Singh called deceased to get the dispute settled with his servant accused – Ravi Kumar. Mohan Lal and deceased followed Gandharv Singh to his tube well. Accused Ravi Kumar and Bahadur Singh (PW-4) were already present there. Gandharv Singh placed a Dhangu behind him. When the talks were going on, a quarrel between accused Ravi Kumar and deceased again ensued. Accused Ravi Kumar picked up Dhangu, placed behind Gandharv Singh and gave two blows on the head of deceased. Deceased fell down. Mohan Lal (PW-3) raised an alarm. In the meantime, Ram Lubhaya also reached there. Accused Ravi Kumar then made good his escape. Deceased was taken to the Primary Health Centre, Jadla by Mohan Lal (PW-3) and Ram Lubhaya where first aid was given and then he was referred to the Civil Hospital.

11. Similarly, in the present case also there was a dispute regarding land between the father of the accused and deceased Devsharan and at the time when Harihar was measuring the land accused came there and all of a sudden assaulted the deceased once on his head with spade. Therefore, the crime in question took place in the heat of passion on the spur of moment and as such the case of the accused falls under exception 4 of section 300 of the IPC. Thus the conviction of the appellant under section 302 of the IPC cannot be sustained.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12. In the result, the appeal partly succeeds. Impugned judgment of the trial Court convicting the appellant under section 302 of the IPC and sentencing to undergo imprisonment for life are set aside, instead thereof, he is convicted under section 304-II of the IPC and sentenced to undergo RI for 10 years. The period, for which the accused remained in police or judicial custody during trial, he shall be entitled for the set off against the sentence imposed on him **Sd/-** **L.C.BHADOO** **Judge** **Sd/-** **Satish K. Agnihotri** **Judge**	